



WISCONSIN STATE ASSEMBLY

STATE REPRESENTATIVE
FREDERICK P. KESSLER
12TH DISTRICT

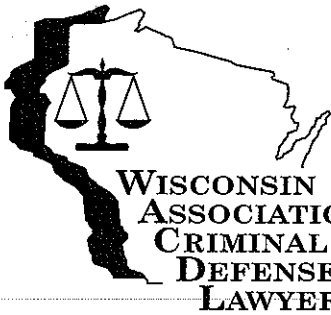
**Statement of State Representative Frederick P. Kessler
Assembly Committee on Judiciary and Ethics
Wisconsin Capitol—GAR
Tuesday, June 2, 2009
Assembly Bill 224**

Chairman and members of the committee:

I thank you for hearing this bill today, and I urge you to recommend passage of AB 224, a bill to raise the hourly rate paid to private attorneys who take Public Defender Cases. Wisconsin's rate is now forty dollars an hour – a rate has not been increased since 1992 and is barely above thirty-five dollar an hour rate established in 1978, when the agency was created. In 2009, forty dollars an hour does not even cover the average lawyer's overhead. By paying such a low hourly rate, we make it impossible for many established and experienced lawyers to take public defender cases. As a result, a growing number of attorneys taking the cases are just out of law school, and questions about the quality of representation have arisen. I believe that if we do not change this voluntarily, it is only a matter of time before a state or federal court decides that we are not meeting our constitutional obligation to provide indigent defendants with an attorney.

As a former circuit judge, I can say from experience that depriving a criminal defendant of competent representation harms not only the defendant, but the district attorney, the judge, the victims, and the system as a whole. A court simply cannot run efficiently and fairly without good attorneys. That is why I propose that the public defender appointment rate be raised from forty to seventy dollars per hour - the rate that the Supreme Court mandates that the counties pay for defendants who do not qualify for a public defender appointment. I recognize that state's the present fiscal situation is dire, and requires difficult choices. However, failing to meet our constitutional responsibilities should not be a cost-saving option.

I thank you for your consideration of AB 224. I will be glad to answer any questions from the committee at this time.



Wisconsin Association of Criminal Defense Lawyers

P.O. Box 6706 • Madison, WI 53716-6706 • (608) 223-1275 • FAX (608) 223-9329 • www.wacdl.com

Statement in support of AB 224

Relating to Raising the Reimbursement Rate for Private Attorneys Appointed by the Wisconsin State Public Defender

June 2, 2009

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to appear before you today. My name is Erik Guenther and I appear here today as a member of the board of directors of the Wisconsin Association of Criminal Defense Lawyers. I am a lawyer in private practice and I primarily handle criminal law matters.

The Wisconsin Association of Criminal Defense Lawyers appears today in support of AB 224. We support increasing the reimbursement rate for private attorneys appointed by the State Public Defender.

Our association has more than 400 lawyer members from communities in all corners of the State. It is an organization formed to promote the proper administration of criminal justice; to foster and maintain the integrity, independence and expertise of the defense lawyer in criminal cases; and to encourage an unyielding concern for the protection of individual rights and due process.

Our members are almost all, by any definition, running small businesses in communities across Wisconsin. They are often sole practitioners or are in small law firms, with five or fewer members. Many of our members do not accept public defender appointments simply because they cannot afford to do so. The current reimbursement rate, \$40 per hour, is not even enough to pay their overhead - office, administrative support, access to legal research, etc. - in most cases.

In many communities, it is the younger and more inexperienced attorneys who are willing to accept appointments at these low rates. According to an article in the Wisconsin State Journal last November, one-third of those who accept appointments have been out of law school less than five years. We are concerned about the effect this may have on the justice system. Fully funding law enforcement and prosecutors without doing the same for the defense function undermines faith in our system of justice.

Defendants and their families who do not feel they are receiving experienced and competent representation are less likely to believe that the system has treated them fairly.

Wisconsin's current public defender rate of \$40 per hour ranks among the very lowest in the nation. In fact, it is the lowest in Wisconsin: Wisconsin counties pay \$70 per hour, the Wisconsin Supreme Court pays \$70 per hour, and the federal court pays \$110 per hour.

In 1978 - 31 years ago - the public defender rate was \$35/hour. It has increased only \$5.00 since then. If the 1978 rate had been raised at the same rate as inflation, the amount paid now would be \$114 per hour.

Raising the rate will help small businesses and will help assure Wisconsin's commitment to the constitutional right to counsel, a right enshrined in both the state and federal constitutions. That right includes the right to qualified and competent counsel; raising the rate will help assure the Wisconsin meets its obligations.

Thank you. I will be glad to try to answer any questions you may have.



Wisconsin State Public Defender

315 N. Henry St. - 2nd Floor

PO Box 7923 Madison, WI 53707-7923

Office Number: 608-266-0087 / Fax Number: 608-267-0584

www.wisspd.org

Nicholas L. Chiarkas
State Public Defender

Kelli Thompson
Deputy State Public
Defender

June 2, 2009

AB 224 – Testimony on behalf of the Wisconsin State Public Defender

Good morning. Thank you for this opportunity to address you on this important matter. I am Deborah Smith, the Director of the Assigned Counsel Division of the Wisconsin State Public Defender. I oversee the part of the program that manages payment to attorneys in private practice who take case appointments.

While we accept that appointed counsel will always be paid well below a market rate for their legal services, the interests of justice, the efficient administration of justice, and the trust and confidence of the public in our justice system requires that appointed counsel be paid a fair rate. \$40 an hour is not a fair rate.

While fairness is often one of those things that is in the eye of the beholder, the unfairness of the current rate is obvious if you look at the numbers. When the Legislature created the State Public Defender in 1978, the hourly rate paid to private bar attorneys was \$35 per hour. If that \$35 hourly pay rate is indexed for inflation, that rate would have been about \$118 by 2007.

Another way to measure the fairness of the rate is to look at the current market rate for legal services. According to surveys conducted by the State Bar of Wisconsin the average hourly rate charged by attorneys in Wisconsin in 1992 (17 years ago) was \$116. The 2007 survey noted an average hourly rate of \$188. \$40/hour is only about 21% of that average market rate.

Another relevant benchmark is the rate paid by other governmental entities that retain attorneys. Most Wisconsin counties pay private attorneys at the Supreme Court rate – currently \$70 per hour – to take court appointments or serve as guardians ad litem. Defense attorneys are paid \$100 per hour for non-capital federal cases. The Office of Lawyer Regulation pays outside counsel in disciplinary matters \$70/hour.

How does the rate paid to appointed lawyers compare to other professionals who contract with this state? In most cases the rate the state pays professionals with advanced degrees is market-driven. However, private attorneys on the SPD appointment list appear to be the only group of private sector professionals whose compensation is set by statute at a rate which does not reflect the market and which does not cover their overhead. Some examples of state procurement hourly rates are:

Video Editor - \$225

Photographer - \$112 to \$200

Occupational Safety Consultants - \$135 - \$145

Aside from the unfairness to the attorneys, the low hourly rate has negative consequences for Wisconsin's justice system. Attorneys leaving the SPD appointment lists have cited the low hourly rate as the primary reason for leaving. Experienced attorneys whose reputation and skill brings them paying clients cannot justify or afford to take more than a few SPD cases.

Most offices serving counties outside of Madison and Milwaukee have an increasingly difficult time finding private bar lawyers to take cases. This leads to delays in appointment in both trial and appellate matters, postponements of hearings, and increased costs. The delays inconvenience victims and police officers. Our offices have received complaints from judges about the delays and offices must routinely appoint attorneys from other counties, increasing travel time and mileage expenses.

The public, the judiciary, and the legislature has expressed concern about the quality of representation provided by the private bar. Although less than 1% of all lawyers licensed in Wisconsin receive public discipline for misconduct each year, of those so disciplined more than 50% are lawyers who have been on the public defender appointment lists. Since the beginning of 2003, the SPD has removed 55 lawyers from the appointment lists due to serious misconduct.

Our own data shows that for each of the last five years clients have requested the withdrawal of their private bar attorney more than twice as often on felony cases as they do for staff lawyers. Replacing a lawyer causes increased costs and often requires a postponement of scheduled hearings and trials.

While an increase in the hourly rate does not insure an increase in quality, it is a piece of the solution to the quality issue. A failure to raise the hourly rate will certainly guarantee that the quality concerns persist.

I would like to thank Representative Kessler for introducing this bill so we have a chance to talk about this important issue. We understand that in these bleak economic times it's difficult to approve a request for more money to pay lawyers to represent poor people charged with crimes. We thank the legislature as a whole for its support of our work over the years and in the current budget proposal. We know that you support us because you are committed to a fair and rational justice system. Thank you.

MEMORANDUM

To: Members, Assembly Committee on Judiciary and Ethics
From: Attorney Diane Diel, President
State Bar of Wisconsin
Date: June 2, 2009
Re: State Bar of Wisconsin Support for AB 224—Increase SPD Private Bar
Reimbursement Rates

My name is Diane Diel, and I am the president of the State Bar of Wisconsin. With me today is Attorney Gerry Mowris, a past president of the State Bar. On behalf of the State Bar of Wisconsin, I want to thank Representative Kessler for his leadership in promoting justice in Wisconsin by sponsoring Assembly Bill 224. I also want to thank Representative Hebl and all committee members for holding this hearing today. I ask for your continued support of attorneys who are small business owners and for your continued support in preserving the constitutional rights of indigent defendants.

Attorneys who accept public defender appointments play a fundamental role in maintaining one of our most important institutions – an honest, fair and effective criminal justice system. Wisconsin's long-outdated hourly rates for private practice attorneys who take public defender cases makes it difficult for attorneys to accept State Public Defender appointments and run a successful small business, resulting in delays and postponements of cases.

The typical Wisconsin lawyer is a small business owner. In fact, of the approximately 3800 law firms in Wisconsin, 92% or about 3500 are small businesses with five or fewer lawyers. Fully 70% or 2657 of those law firms are solo practices consisting of only one lawyer.

The small businesses Wisconsin lawyers operate are woven into the fabric of Wisconsin's economic life. Wisconsin lawyers provide employment, pay taxes, and support other businesses around the state.

Since 1995, the hourly rate for private attorneys who take SPD appointments has been frozen by statute at \$40 per hour. It is impossible for an attorney to run a successful small business and be paid at a rate so low it does not even cover overhead. Most people would be hard-pressed to identify any group of professional small-business owners who are paid such a low hourly rate.

These unreasonably low and out-dated private bar rates are unacceptable. These rates need to be raised significantly.

When Wisconsin created the SPD as an agency 30 years ago, the hourly rate for private bar attorneys was set at \$35 for out-of-court work, which accounts for the vast majority of time



STATE BAR of
WISCONSIN

**WISCONSIN[®]
LAWYERS**
EXPERT ADVISERS.
SERVING YOU.

billed to the SPD. If this 1978 rate were indexed for inflation, it would now be over \$118 per hour. (The Legislature increased the rate slightly -- once -- in 1992 to \$50 for in-court work and \$40 for out-of-court work. The 1995 state budget bill cut that rate back to the current rate, and it has remained frozen since then.)

By comparison, the state currently pays the following rates for other professional work: video editor - \$225/hour; photographer - \$112 to \$200/hour; and occupational safety consultants - \$135 to \$145/hour.

Further, other government entities appoint attorneys at higher hourly rates. Wisconsin counties usually pay private attorneys the \$70 per hour Supreme Court rate to take court appointments. Defense attorneys are paid \$95 per hour for federal cases.

Further complicating the issue, the state runs out of money to pay private bar attorneys virtually every biennium. This year, the state has again run out of money to pay these bills, and for several months now attorneys on the private bar list have been told they will have to wait until after July 1 to have their bills paid. Neither Governor Doyle nor the Joint Finance Committee repaired this deficit in the proposed 2009-2011 budget, and the state will certainly run out of money again sometime in 2011, if not sooner. In the same proposed budget, Joint Finance approved expanding eligibility for appointment of a public defender -- a move the State Bar whole-heartedly supports. It is now time to increase rates as well.

I have attached to my testimony a list of private bar attorneys who have contacted us in just the last few days -- since this hearing was noticed -- to express their support for AB 224. I have also attached several letters of support that State Bar members have forwarded.

I ask you to support these attorneys who are small business owners in Wisconsin. Raising the SPD private bar rate to a rate comparable with the Supreme Court rate will support small businesses, provide jobs, and support Wisconsin's economy.

Thank you for your support.

Atty. Randy Kaiser	Shikora & Kaiser LLP	161 W Wisconsin Ave # 3032	Milwaukee	WI	53203-2602
Atty. Hans Koesser	Koesser Law Office SC	7601 - 6th Avenue	Kenosha	WI	53143
Atty. Nels Kjome	Tod O Daniel Law Office	115 E Court St #100	Janesville	WI	53545-3961
Atty. Michael J. Fitzsimmons	Fitzsimmons Law Office LLC	PO Box 7444	Elkhorn	WI	53121-0744
Atty. Martin E. Love	Martin E Love Law Office	1520 Greenbrier Ln	Mequon	WI	53092-5074
Atty. Martha Carlson		PO Box 336	Burlington	WI	53105-1309
Atty. Andrew M Morgan	Morgan Law Office	PO Box 1962	Wausau	WI	54402-1962
Atty. William Drengler	Drengler Law Firm	PO Box 5152	Wausau	WI	54402-5152
Atty. Urszula Tempka	Law Office of Atty U. Tempka	PO Box 11213	Milwaukee	WI	53211-0213
Atty. Theresa Selenske	Theresa Selenske Law Firm	5020 Mill Ave	Wisconsin Rapids	WI	54494-7289
Atty. John Schneider	Schneider Law Office	PO Box 215	Balsam Lake	WI	54810-0215
Atty. Mary Ann Hook Swan	Hook Swan LLC	PO Box 211	Shell Lake	WI	54871-0211
Atty. Patricia Schlub	Schlub Law Office	2312 N Grandview Blvd Ste 201	Waukesha	WI	53188
Atty. Gerhardt F. Getzin	Gerhardt F Getzin Attorney at Law	PO Box 1043	Wausau	WI	54402-1043
Atty. Dianne Erickson	Wasielewski & Erickson	1442 N Farwell Ave #606	Milwaukee	WI	53202-2924
Atty. Patrick Earle	Law Office of Patrick T Earle	322 W State St #201	Milwaukee	WI	53203-1315
Atty. Jessica Trudell	Atty. Jessica L. Trudell	1225 7th S # 509	La Crosse	WI	54601-5413
Atty. Lisa J. Brouillette	Brouillette & Brouillette	PO Box 588	Florence	WI	54121-0588
Atty. Barbara A. Cadwell	Atty. Barbara A. Cadwell	N3891 Hwy 55	White Lake	WI	54491-9716
Atty. James Patrick Conklin	Jaessing & Conklin SC	PO Box 826	Waukesha	WI	53187-0826
Atty. Paul Jaessing	Jaessing & Conklin SC	PO Box 826	Waukesha	WI	53187-0826
Atty. Keary Bilka	Keary W Bilka Attorney At Law	935 S 8th St # 202	Manitowoc	WI	54220-4545
Atty. Kris Wright	Wright & Ellingson SC	PO Box 38	Galesville	WI	54630-0038
Atty. Lisa Aldinger Hamblin	Gleiss, Locante & Associates LLP	PO Box 379	Sparta	WI	54656-0379
Atty. Ward Winton	Ward Wm Winton Law Office	PO Box 796	Hayward	WI	54843-0796
Atty. Rebecca L. Gietman	Office of Rebecca L. Gietman	805 S Madison St	Chilton	WI	53014-1535
Atty. Steven Zaleski		20 E Milwaukee St - Ste 302	Janesville	WI	53545
Atty. Richard G. Sheil		285 Lynne Trl	Oregon	WI	53575-3425
Atty. Thomas P Lyons	Wingrove & Lyons Law Offices LLP	PO Box 55	Sheboygan	WI	53082-0055
Atty. David Van Straten, II	Lubinski, Reed & Klass SC	PO Box 67	Seymour	WI	54165-0067
Atty. Sylvie Dahnert	Dahnert Law Office	PO Box 176	Jefferson	WI	53549-0176
Atty. Donald Dudley	Law Office of Donald C Dudley	230 W Wells Street #600	Milwaukee	WI	53203-1845
Atty. Carrie Vance	Community Justice Inc	222 S Hamilton St #22	Madison	WI	53703-3201
Atty. Daniel Murray	Murray & Goeschko	324 W Broadway	Waukesha	WI	53816-4609
Atty. Roberta Heckes	Roberta A Heckes Attorney at Law	PO Box 295	Adell	WI	53001-0295
Atty. Jennifer Thompson	Basiliere, Thompson, Bissett & Castonia LL	PO Box 3204	Oshkosh	WI	54903-3204
Atty. Dennis J. Weden	Dennis Weden Law Office	1216 N Prospect Ave	Milwaukee	WI	53202-3014
Atty. Sheila JB Paul & Greg Paul	Paul Law Firm LLC	PO Box 185	Hudson	WI	54016-0185
Harold & Shirley Brooks		2259 310th St	Clear Lake	WI	54005
Atty. Jesse G. Howard	Jesse G. Howard Attorney at Law	PO Box 232	Montello	WI	53949-0232
Attorney Peter C. Rotter		1008 5th Street	Wausau	WI	54403

**Mary Ann Swan
Attorney at Law**

May 29, 2009

Dear Legislators,

As a sole practitioner in NW Wisconsin, I have accepted public defender appointments since 1994 when I passed the Wisconsin bar. These appointments were a large part of my practice over the years. I enjoyed using my skills to assist those who could not afford to pay a private lawyer the local rate of \$100 an hour.

However as I became more experienced and became connected with the community, I was offered Court appointments at \$90.00 an hour and my private appointments at \$125.00 increased as my practice and reputation grew. Now, it makes no sense to take any SPD appointments at \$40.00 when I earn close to or more than \$100.00 on a regular basis including my travel time.

The more experienced attorneys, or those who have to make a living, cannot take SPD cases at the \$40.00 rate for the mere economy of the matter. My husband lost his job and I cannot afford to spend any time at that rate. I receive no health benefits, no retirement, and SPD does not pay for business expenses such as postage and copying.

I will say yes to taking a few cases due to my relationships with former clients or because I buckle to the pleading of SPD office staff that are desperate to locate counsel, however with all expenses in my life increasing, such as gas, postage, printer, SPD appointments cost my business rather than help me earn a living.

Please consider the increase to \$70.00.

Respectfully,

Mary Ann Hook Swan

P.O. Box 211
Shell Lake, WI
54871

715 468-4533
hookswan@hotmail.com

June 1, 2009

Wisconsin Legislature
Assembly Committee on Judiciary and Ethics
2 E. Main Street
Madison, WI 53702

RE: Assembly Bill 224; Public Hearing at 10 a.m. on June 2, 2009

To Whom It May Concern:

I have practiced law in rural Wisconsin for approximately 11 years. For most of that time I have accepted private bar Public Defender appointments for criminal, mental health, termination of parental rights and, more recently, guardianship clients. My practice is located in Trempealeau County; however, I routinely accept appointments in the adjacent Eau Claire, La Crosse, Jackson, Monroe and Vernon counties. In rural communities most residents cannot afford the cost of private representation. I feel a moral responsibility to assist those people I can through Public Defender appointments.

Last summer I opened my own law practice with a less experienced attorney. Our expenses still exceed our income, and we have yet to draw a salary from our new business. We are both still paying off our student loans.

While I continue to accept a large number of Public Defender clients, I am increasingly finding it fiscally challenging to devote my limited time with cases that only permit a \$40/hour fee reimbursement (and a mere \$25/hour for travel, with far lower mileage reimbursement than IRS rates). I am finding it difficult to justify accepting these appointments, especially in the more distant locations of Eau Claire and Vernon counties, which require nearly 2.5 hours of round trip travel in addition to the time involved in representing client interests. Even in my home and more adjacent counties, fiscal realities impacting county budgets frequently cause jail inmates to be housed in other counties even more distant from our office, requiring substantial travel time when I must meet with clients to review paperwork and prepare for upcoming court hearings. Jail housing decisions are not always made or communicated to us at the time we accept appointments. In addition, we must accept collect calls to communicate with our clients effectively. My office's typical collect call totals range from \$300-500 per month. While I am reimbursed for the cost of calls within a few weeks after the case is complete (unless SPD has run out of money, which happens every biennium), I must cover and carry those charges for an average of 6 months.

The hourly private bar reimbursement has remained at \$40/hour since long before I began practicing law, yet the costs of operating a private law practice and driving for court appearances have sky-rocketed. Private bar attorneys have been asking lawmakers to increase reimbursement to match the county-appointed attorney rate of \$70 per hour for at least the 11 years I have been in practice. While it would be easy for lawmakers to cop out now based on budget challenges facing the entire state, there has never been a time when skilled attorneys are more necessary to meet the volume of people losing their jobs and qualifying for SPD-appointed counsel. I feel that my well-rounded general practice background and experience allows me to provide excellent representation to Public Defender clients in need. Please increase the reimbursement rate for time, travel and mileage to make it feasible for me to remain solvent in doing so.

Sincerely,
WRIGHT & ELLINGSON, S.C.

Kris L. Wright
Kris L. Wright
KLW/ns

Adam Korbitz

From: Ward Winton [wwwinton@cheqnet.net]
Sent: Friday, May 29, 2009 2:34 PM
To: Adam Korbitz
Subject: State Bar Reimbursement Rate

**Ward Wm. Winton
Attorney at Law**

P.O. Box 796, 15842 West Second Street
Hayward, WI 54843
Telephone: 715/634-3763
Fax: 715/634-8069

May 29, 2009

Mr. Adam Korbitz
Via email: akorbitz@wisbar.org

Re: Change in Private Bar Reimbursement Rate

Dear Mr. Korbitz:

Thank you for your email letter. It is impossible for me to attend the hearing, so if you can file this letter for consideration, I would greatly appreciate it.

I have been practicing law in Wisconsin since 1977 and have been accepting cases from the State Public Defender for about that long. In rural Northern Wisconsin, most of the attorneys have accepted those cases as a service to the legal system.

The rate of \$40 per hour is horrendously outdated. When the standard hourly lawyers normally charge was in the neighborhood of \$80 per hour, one could do SPD work as pro bono. When the standard hourly rate, as impelled by the increasing cost of operating a law office, if at the level of \$150, the SPD rate does not even pay the overhead. Many attorneys have stopped taking SPD cases because it is financially impossible to do so.

The guardian ad litem rate in our county is about \$100 per hour, as is the rate for acting Corporation Counsel. The rate for taking Circuit Court appointments for criminal defendants is \$70 per hour.

Also, the time period between filing a bill with the SPD and getting paid is unusually long, which adds to the difficulty imposed by the extremely low rate.

I urge our legislators to support the increase in the reimbursement rate.

Thank you!

Ward Wm. Winton
Attorney at Law

This e-mail is confidential, intended only for the recipient named above and may contain information that is privileged, attorney's work or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient, please immediately notify the sender at wintonlawoffices@cheqnet.net or by telephone at (715) 634-4450 and delete the email from your computer. Thank you.

CAUTION: Electronic mail sent through the internet is not secure and could be intercepted by a third party. For your protection, avoid sending identifying information, such as account, Social Security or card numbers to us or others. Further, do not send time-sensitive, action-oriented messages as it is our policy not to accept such items electronically. If you want your matter to be given prompt attention, then call us at (715) 634-4450.

Adam Korbitz

From: Peter Rotter [kindpeter@dwave.net]
Sent: Monday, June 01, 2009 5:03 PM
To: Adam Korbitz
Subject: AB-224 comments

The following are excerpts from letters I have written over the years to my representatives, the Governor and members of Joint Finance:

The attorneys that perform the essential state obligation of providing legal representation to those who have been accused of crimes are currently paid at a shamefully low rate of \$40.00 per hour, set at this level in 1995.

I am a responsible, generous and charitable individual, that is why I have continued to take Public Defender cases. I believe that I must assist those less fortunate than me especially in their time of greatest need. I believe that I must work hard in that representation, giving of myself and my abilities to do so. I believe that I must do this even if I am not compensated as fully as I ought to be for those services.

That is responsible, generous and charitable.

I am sure that you can see that such a sense of obligation can lead to my being taken advantage of by less scrupulous individuals. In fact it has happened, and I have tolerated much more of it than is healthy for me and my family. The part that bothers me the most is that the least scrupulous individual I deal with is the State! The state takes advantage of good people's sense of duty and obligation, of their kindness and generosity, by paying them less than their services are worth. That is one thing, to pay them less than the cost of doing business is another, disgraceful thing. To then refuse to pay them in a timely fashion? Such behavior is despicable!

I know that we demand the impossible of you, balance the budget while fully funding the programs and not raising taxes! I try not to complain about taxes, because I believe the state has obligations to us that can only be met by the collection of taxes. Yet, our corrections budget tops 1.3 billion dollars, and is getting bigger every year as we pass more and more get tough laws. Yet we do nothing to address the lack of voice of those against whom the state attacks.

This issue should be among the highest priorities.

We have all heard that freedom isn't free. It takes hard work and has very real costs in lives and dollars. But what is Freedom? Isn't a critical element of freedom the right to be represented when accused by the state of committing a crime? In fact every other freedom is protected by this one!

It is time to raise the rates and fully fund the office of the State Public Defender.

Our criminal justice system is the shining star of the world, for all time. When and where can you point to a better and more just system of law than ours? There certainly have been more aggressive prosecutions; police states and totalitarian regimes. Obviously, the aspect of our Justice system that makes it great is the protections that we have in place for those who are accused by, and made to answer to, the awesome power of the state. Our Constitutional Rights, Bill of Rights, and Civil Rights mean nothing without the Right to Counsel to enforce them.

There is never enough money budgeted to fully fund the Assigned Counsel Division. Compound this with the fact that the \$40.00 per hour rate is less than a quarter of what many attorneys charge private pay clients and you can see what kind of frustration this causes those of us who toil long hard hours to make sure that our system of justice remains the best in the world.

It is time to fully fund the Public Defender Budget and increase the rate for the attorneys taking cases through the Assigned Counsel Division.

August 2008

I have just gotten off the phone with staff members at the Public Defender's office in Wausau. They are begging me to take on a case that I do not have the time or inclination to handle. It is a serious felony matter that will likely go to trial and require nearly 100 hours of work. I have been told that there are few if any attorneys in this area that can take this kind of case right now.

In the early 1990's a study was commissioned by the Supreme Court of Wisconsin that found that the average cost of doing business for attorneys in Wisconsin was \$60 per hour. The State Public Defender's Office pays attorneys taking Assigned Council cases \$40 per hour. If we use those numbers, I would gross \$4,000 and I would lose \$2,000 net handling this case for you. At the same time I would give up a total potential gross income of \$20,000 dollars (my hourly rate is \$200.00 per hour).

I can assure you that my cost of doing business is well above the 1990's figure of \$60.00 per hour.

I think you can figure out what my answer has to be to this latest request by the state for charity from me.

I am a small business person. I pay taxes and support my community and state in many ways. I also have an employee. I take public defender appointments out of a sense of duty. I believe that this is important enough that I do it even though the reimbursement rate is below my cost of doing business. The result is that my employee and I earn less and our benefits are reduced. My employee does not have insurance and I can not afford to offer it to him. My insurance is through my spouse's employment.

Proper reimbursement of attorneys would result in healthier and stronger small businesses in our state and communities. The state should not be relying on the charity and kindness of small businesses and individuals to fund its Constitutional obligations.

Raising the SPD ACD rates at this time may seem to some to be outrageous. Some may think that in this time of economic crisis it makes no sense. Yet, the rates have been abysmally low for years and I have been clamoring for an appropriate increase for years (I spoke on this issue at a Joint Finance Committee public hearing more than 10 years ago). Representative Kessler has repeatedly drafted legislation to increase the rates and had the bills die in committee. Waiting until really difficult times to address the issue should not justify a claim that the time is not right. We have waited through the good times with no response.

The time is now to raise the SPD ACD rates to \$70.00 per hour and include an automatic annual increase tied to inflation, Staff wage increases for SPD and Assistant District Attorneys to keep the rates current.

Peter C. Rotter,

Kindpeter@dwave.net

(715)843-5463

1008 5th Street

Wausau WI 54403

The following are excerpts from letters I have written over the years to my representatives, the Governor and members of Joint Finance.

The attorneys that perform the essential state obligation of providing legal representation to those who have been accused of crimes are currently paid at a shamefully low rate of \$40.00 per hour, set at this level in 1995.

I am a responsible, generous and charitable individual, that is why I have continued to take Public Defender cases. I believe that I must assist those less fortunate than me especially in their time of greatest need. I believe that I must work hard in that representation, giving of myself and my abilities to do so. I believe that I must do this even if I am not compensated as fully as I ought to be for those services.

That is responsible, generous and charitable.

I am sure that you can see that such a sense of obligation can lead to my being taken advantage of by less scrupulous individuals. In fact it has happened, and I have tolerated much more of it than is healthy for me and my family. The part that bothers me the most is that the least scrupulous individual I deal with is the State! The state takes advantage of good people's sense of duty and obligation, of their kindness and generosity, by paying them less than their services are worth. That is one thing, to pay them less than the cost of doing business is another, disgraceful thing. To then refuse to pay them in a timely fashion? Such behavior is despicable!

I know that we demand the impossible of you, balance the budget while fully funding the programs and not raising taxes! I try not to complain about taxes, because I believe the state has obligations to us that can only be met by the collection of taxes. Yet, our corrections budget tops 1.3 billion dollars, and is getting bigger every year as we pass more and more get tough laws. Yet we do nothing to address the lack of voice of those against whom the state attacks.

This issue should be among the highest priorities.

We have all heard that freedom isn't free. It takes hard work and has very real costs in lives and dollars. But what is Freedom? Isn't a critical element of freedom the right to be represented when accused by the state of committing a crime? In fact every other freedom is protected by this one!

It is time to raise the rates and fully fund the office of the State Public Defender.

Our criminal justice system is the shining star of the world, for all time. When and where can you point to a better and more just system of law than ours? There certainly have been more aggressive prosecutions; police states and totalitarian regimes. Obviously, the aspect of our Justice system that

makes it great is the protections that we have in place for those who are accused by, and made to answer to, the awesome power of the state. Our Constitutional Rights, Bill of Rights, and Civil Rights mean nothing without the Right to Counsel to enforce them.

There is never enough money budgeted to fully fund the Assigned Counsel Division. Compound this with the fact that the \$40.00 per hour rate is less than a quarter of what many attorneys charge private pay clients and you can see what kind of frustration this causes those of us who toil long hard hours to make sure that our system of justice remains the best in the world.

It is time to fully fund the Public Defender Budget and increase the rate for the attorneys taking cases through the Assigned Counsel Division.

August 2008

I have just gotten off the phone with staff members at the Public Defender's office in Wausau. They are begging me to take on a case that I do not have the time or inclination to handle. It is a serious felony matter that will likely go to trial and require nearly 100 hours of work. I have been told that there are few if any attorneys in this area that can take this kind of case right now.

In the early 1990's a study was commissioned by the Supreme Court of Wisconsin that found that the average cost of doing business for attorneys in Wisconsin was \$60 per hour. The State Public Defender's Office pays attorneys taking Assigned Council cases \$40 per hour. If we use those numbers, I would gross \$4,000 and I would lose \$2,000 net handling this case for you. At the same time I would give up a total potential gross income of \$20,000 dollars (my hourly rate is \$200.00 per hour).

I can assure you that my cost of doing business is well above the 1990's figure of \$60.00 per hour.

I think you can figure out what my answer has to be to this latest request by the state for charity from me.

I am a small business person. I pay taxes and support my community and state in many ways. I also have an employee. I take public defender appointments out of a sense of duty. I believe that this is important enough that I do it even though the reimbursement rate is below my cost of doing business. The result is that my employee and I earn less and our benefits are reduced. My employee does not have insurance and I can not afford to offer it to him. My insurance is through my spouse's employment.

Proper reimbursement of attorneys would result in healthier and stronger small businesses in our state and communities. The state should not be relying on the charity and kindness of small businesses and individuals to fund its Constitutional obligations.

Raising the SPD ACD rates at this time may seem to some to be outrageous. Some may think that in this time of economic crisis it makes no sense. Yet, the rates have been abysmally low for years and I have been clamoring for an appropriate increase for years (I spoke on this issue at a Joint Finance Committee public hearing more than 10 years ago). Representative Kessler has repeatedly drafted legislation to increase the rates and had the bills die in committee. Waiting until really difficult times to address the issue should not justify a claim that the time is not right. We have waited through the good times with no response.

The time is now to raise the SPD ACD rates to \$70.00 per hour and include an automatic annual increase tied to inflation, Staff wage increases for SPD and Assistant District Attorneys to keep the rates current.